

**RULES OF THE
PROBATE COURT
OF
SHELBY COUNTY
TENNESSEE**

EFFECTIVE SEPTEMBER 15, 2001

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**RULES OF THE PROBATE COURT
OF SHELBY COUNTY, TENNESSEE**

The Probate Court of Shelby County, Tennessee, hereby adopts the following as its Local Rules of Court:

RULE I

SESSIONS AND COURTROOM PROCEDURE

1. Monday through Thursday the Court will be in regular session from 9:00 A.M. until noon and from 2:00 P.M. until 3:00 P.M. On Friday, the Court will be in regular session from 9:00 A.M. until noon. Additionally, mental health matters will be heard at the courtroom located in the Memphis Mental Health Institute commencing at 1:00 P.M. on Thursday afternoons. The Judges will alternate months in hearing mental health matters. During a portion of the summer months the Court may adopt a flexible vacation schedule. Attorneys who desire to have matters heard in the afternoon during summer months should consult with the Judge's secretary concerning availability.

2. The Judge shall wear a Judicial robe during all sessions of the Court except when, in the discretion of the Judge, the circumstances are such or the matter before the Court is of such a nature as justifies a less formal hearing.

3. When the Judge first enters the Courtroom each day, the Sheriff shall call the Court to order directing all in attendance to stand, and upon being so instructed by the Court, will open Court in the manner following:

"Hear Ye! Hear Ye! This Honorable Probate Court of Shelby County is now open for the transaction of business pursuant to adjournment. The Honorable Judge [Judge's Name] presiding. All persons having business with this Court draw near, give attention, and ye shall be heard. Be seated, please."

4. The use of cellular phones and audible pagers in the Courtroom is prohibited.

5. There will be no eating, drinking, or smoking in the Courtroom, and no food or drink containers shall be brought into the Courtroom.

6. The front row of seats at the counsel table in the Courtroom is reserved for members of the Bar.

7. All attorneys and Court attendants will wear appropriate business attire while in the Courtroom.

8. Attorneys are encouraged to state their name, the docket number of the case, and the nature of the matter being presented. For example: "Your Honor, for the record my name is [attorney's name], and I have a petition to open an intestate estate and appoint an administrator. The docket number is [docket number]."

9. When addressing the Court, unless excused by the Judge, counsel should rise and remain standing while making any objection, argument, or statement to the Court, including such time as the Court may address or interrogate counsel. Counsels are not required to stand while interrogating witnesses but may do so at counsel's option.

10. All items that are presented to the Court such as petitions, exhibits, and orders shall be handed to the Judge through the Court attendants. Attorneys must seek and obtain permission from the Judge before approaching the Bench or the witnesses.

11. Upon the Judge instructing the Sheriff to adjourn Court for the day, the Sheriff will direct all persons in the Courtroom to stand and will adjourn Court in the following manner:

"This Court now stands adjourned until tomorrow morning at 9:00 o'clock (or such other day and time as the Court may indicate)."

12. The Sheriff in attendance upon the Court will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct.

RULE II

ATTORNEYS

1. Only attorneys licensed to practice law in Tennessee may represent persons in matters coming before the Court except that attorneys who are not licensed to practice in Tennessee may appear pro hac vice under the terms and conditions set forth in Tennessee Supreme Court Rule 19.

2. An attorney who opens any matter becomes the attorney of record and is obligated to comply with all applicable laws, these Local Rules, and all orders of the Court. It is the responsibility of the attorney of record to see to the full extent of attorney's professional ability that each such matter is properly managed, administered, distributed, and closed without undue delay. The attorney of record is not relieved of this responsibility unless and until the attorney obtains an order of withdrawal or a Notice of Appearance is filed in the cause as hereafter provided.

3. The Court may enter an Order Substituting Counsel or, in the alternative, a Notice of Appearance may be filed in the cause if signed by both the new and withdrawing attorney(s). However, the signature of the withdrawing attorney(s) is not required if the withdrawing attorney(s) is no longer engaged in the practice of law.

4. In all cases where joint-control of accounts is ordered by the Court or required by the surety on a bond, it is the responsibility of the attorney of record to oversee the proper opening of all fiduciary accounts, ascertain that all disbursements are proper, and to timely review all statements issued by financial institutions relating to these accounts.

5. It is the responsibility of the attorney of record to advise the Court whenever a bond appears to be either insufficient or excessive by requesting an order increasing or decreasing the bond as appropriate. However, the amount of a bond is not normally decreased except upon the filing of an accounting.

6. When a matter is one that must be specially set for a hearing

pursuant to RULE VIII, it is the responsibility of the attorney of record to obtain a special setting from the Judge's secretary. Upon requesting a special setting, if counsel reasonably anticipates that the time required will likely exceed forty-five (45) minutes, this fact shall be brought to the attention of the Judge's secretary for scheduling purposes. No matter shall be specially set unless the attorney requesting the setting reasonably expects that all parties will be prepared to have the matter heard at the time set. Attorneys shall notify the Court at the earliest time possible when it appears that a specially set matter cannot be heard on the date scheduled.

7. Orders or decrees shall be prepared by counsel for the prevailing party and submitted to adversary counsel for approval. Orders or decrees shall be presented to the Court by counsel within one week after the matter is decided, unless additional time is granted by the Court. In the event of a disagreement between the counsel for the prevailing party and adversary counsel regarding the contents of the order or decree, counsel for each party shall prepare such order or decree as is considered appropriate, adhering as nearly as practicable to the wording adopted by adversary counsel, and both shall be submitted to the Court at the same time whenever possible.

8. All Briefs, Memoranda of Points and Authorities or similar matters pertaining to a contested or specially set matter shall be submitted to the Judge's secretary (and opposing counsel where applicable) at least three (3) days prior to the hearing date. It is suggested that photocopies of the relevant portions of cited authorities be attached to Briefs or Memoranda of Points and Authorities. These documents are not to be filed

9. Counsel appearing in Probate Court shall follow the Guidelines for Professional Courtesy and Conduct adopted by the Memphis Bar Association. Counsels are expected to deal with opposing counsel, the parties, and the Court in a professional, courteous, and ethical manner. Counsels are expected to be open and fair in their handling of probate matters, consistent with their adversarial responsibilities.

10. Before presenting a contested matter to the court, counsel shall to the best of their ability encourage their clients to settle their differences. If this cannot be accomplished, the Court encourages parties to attempt to resolve their differences through mediation.

RULE III

RULES OF CIVIL PROCEDURE AND EVIDENCE

The Tennessee Rules of Civil Procedure and Tennessee Rules of Evidence are expressly adopted by the Shelby County Probate Court.

RULE IV

PLEADINGS

1. All petitions and complaints filed in Court shall be sworn to and shall be addressed in the following form:

"TO THE HONORABLE JUDGES OF THE PROBATE
COURT OF SHELBY COUNTY, TENNESSEE:"

2. All petitions, motions, and other pleadings shall be filed with the Clerk.

3. All pleadings shall set forth the docket number, style of the cause, the nature of same, and the name and signature of counsel. All pleadings filed by an attorney in a matter shall also contain the address, telephone number, and disciplinary number of counsel. The title of an order should contain a brief description of the action taken.

4. No original pleading or file shall be withdrawn from the Courthouse without a Court order.

RULE V

PETITIONS TO OPEN ESTATES

Pursuant to Tenn. Code Ann. § 30-1-117, the following shall be included in petitions to admit wills to probate and petitions for the administration of estates:

- a. The identity and address of the petitioner.
- b. The decedent's name, age, if known, date and place of death, and residence at time of death.
- c. In case of intestacy, the name, age, if known, mailing address, and relationship of each of the heirs at law of the decedent.
- d. A statement that the decedent died intestate or, if a will is presented, the date of execution, if known, of the document or documents offered for probate and the names of all attesting witnesses.
- e. A copy of the document (s) offered for probate is attached to the petition.
- f. The names and relationships of the devisees and legatees and the city of residence of each if known and, similar information for those who are entitled to the decedent's property under the statutes of intestate succession. The names of any minors or other person under disability shall be noted.
- g. An estimate of the fair market value of the estate to be administered, unless bond is waived by the document offered for probate or is waived as authorized by statute.
- h. If there is a document, whether the document offered for probate waives the filing of any inventory and accounting or whether such is not otherwise required by law.
- i. If there is a document, a statement that the petitioner is not aware of any instrument revoking the document being offered for probate, if such be the case, and that the petitioner believes that the document being offered for probate is the decedent's last will.

RULE VI

ASSIGNMENT OF CASES

1. Except as otherwise provided, the Clerk will assign matters with odd docket numbers to Division One and will assign matters with even docket numbers to Division Two. When filing a matter that is a companion case or that relates to a pending matter, the attorney should call this fact to the attention of the Clerk. Under such circumstances, the Clerk will assign the new case to the Division of Court in which the companion or related case is pending.

2. After a case has been assigned to a particular Division, the Judge of that Division shall have complete control over the matter. In the interest of justice and for good cause, the Judges, by mutual consent, may transfer a case from one Division of Court to the other.

3. When any matter requires immediate attention and the Judge to whom the matter has been assigned is not available, (or is involved in a protracted hearing) the Judge who is available and consents thereto may hear the matter by interchange.

RULE VII

APPOINTMENT OF GUARDIANS AD LITEM

1. In any case in which a petition is filed for the sale or improvement of any real property belonging to a minor or other person under disability, the Court will appoint a guardian ad litem who shall investigate all matters embraced in the petition, attend the hearing, and file a written report with the Court at least three (3) days prior to the scheduled hearing on the matter. Unless required by statute, appointment of a guardian ad litem may be waived by the Court for good cause.

2. In all Petitions filed for Court approval of unauthorized encroachment of funds, sales of personalty, and in all other matters relating to persons under disability, the Court may, in its discretion, appoint a Guardian Ad Litem to make an investigation and file a written report with the Court. This report

shall be filed by noon on the day prior to a scheduled hearing. A copy shall also be left with the appropriate Judge's secretary.

3. When a Guardian Ad Litem is appointed, the attorney for the Petitioner shall be responsible for immediately notifying the Guardian Ad Litem of this appointment and furnishing copies of all pleadings and appropriate documents to the Guardian Ad Litem.

RULE VIII

SPECIAL SETTINGS

1. The following matters shall be specially set for hearing at a date and time certain after the pleadings are at issue:

- a. Petitions to sell or encumber real property.
- b. Petitions to ratify substantial or unusual unauthorized encroachments.
- c. Exceptions to reports of the Clerk.
- d. Petitions to admit wills to probate in solemn form.
- e. Petitions for substantial encroachments for support of wards or to pay debts.
- f. Petitions to set a year's support, to set aside exempt property or to determine an elective share.
- g. Petitions to contest a will.
- h. Petitions to establish lost or spoliated wills.
- i. Petitions to construe provisions of wills.
- j. Applications for fees that exceed \$15,000.00.
- k. Applications for a fee that is in excess of the guidelines set forth in Rule XIII.
- l. All contested matters.
- m. Other matters such as those involving complex legal or factual issues or those that are expected to take more than forty-five (45) minutes to be heard.
- n. Matters involving trusts.

2. It shall be the responsibility of the attorney who requests the special setting to give written notice to all interested parties. Interested parties entitled to notice shall include the creditors of a decedent's estate if the estate is expected to become insolvent and shall also include the State of Tennessee if some or all of the estate may escheat or be payable to the State of Tennessee. Service of process may also be required as provided by law.

3. The Court, in its discretion, may hear the above matters without a special setting upon good cause shown, provided that the Court finds that notice has been given or that notice is not required.

RULE IX

WITNESSES

Witnesses shall be sworn separately and immediately before taking the witness stand, unless otherwise ordered by the Court.

RULE X

INVENTORY IN DECEDENTS' ESTATES

1. As provided by Tenn. Code Ann. § 30-2-301, an inventory must be filed by the personal representative within sixty (60) days after commencement of the administration of a testate or intestate estate unless waived as hereafter provided.

2. In intestate estates, and in testate estates when the will does not waive inventory, the inventory may be waived if all heirs or beneficiaries consent thereto, provided all named heirs or beneficiaries are sui juris and provided the estate is solvent. If any heir is a minor, or of unsound mind, or declines to consent to waiver of the inventory, then an inventory shall be filed. In testate estates, no inventory is required if the will waives it; provided however, if an interested party requests an inventory, the inventory shall be filed.

3. The inventory should list all probate assets but exact dollar

values need not be given nor must an appraisal be obtained. The Court does not require item by item listing of furniture and personal effects unless such an itemization is requested by an interested party.

4. The attorney of record is responsible for seeing that a copy of the inventory is provided to all interested parties.

RULE XI

ACCOUNTINGS

1. As provided by Tenn. Code Ann. § 30-2-601, the personal representative of a decedent's estate is required to make an accounting with the Clerk of the Court within fifteen months from the date of qualification and annually thereafter until the estate is fully administered. For good cause shown, the Court may extend the time for filing annual or final accountings. Tennessee law provides that accountings may be waived by the Court if the decedent's will waives the requirement or if all residuary beneficiaries are sui juris and have, in writing, excused the personal representative from filing an accounting. However, this Court's policy is not to waive accountings or extend time for filing accountings unless all interested parties are sui juris and agree, in writing, to waive or extend time for filing accountings. It should also be emphasized that, regardless of whether a waiver of accounting is allowed, the personal representative and counsel are obligated under these Rules to see that the estate is properly managed, administered, distributed, and closed without undue delay.

2. Pursuant to the requirement of Tenn. Code Ann. § 30-2-603 no account of a personal representative in a decedent's estate shall be taken until the clerk of the court or the personal representative or the personal representative's attorney has served the parties interested with notice of taking the account at least five (5) days before the time fixed for taking the same. A certification as to notice must be filed with the accounting and shall be signed by the attorney or personal representative to show that such notice was given. This requirement applies to all accountings in decedent's estates.

3. As provided for in Tenn. Code Ann. § 30-2-601(e), the personal

representative, unless the representative is a bank, shall furnish the original of all canceled checks written on the estate account in support of the financial information entered in the accounting. If the financial institution does not return the original canceled checks, the photocopies of checks prepared by the financial institution or if none, the original printed statement can be substituted for the original canceled checks. This original statement must clearly delineate the date, payee and amount of the check for each disbursement.

4. Attorneys are urged to close estates within fifteen months after opening the estate. The Clerk of the Probate Court is authorized to approve one extension of time for up to sixty additional days provided the estate is less than two years old. An accounting should always be filed within fifteen months of opening an estate if a minor or incompetent person is a residuary beneficiary, or if a residuary beneficiary is a competent adult but declines to waive the accounting.

5. The personal representative of an estate should always furnish either an informal or a formal detailed accounting to residuary distributees of an estate. It is only the formal Court-approved accounting that may be waived by the Court. In no event should a personal representative or an attorney use pressure or undue influence to make a beneficiary or heir feel that he or she must sign a waiver. It is therefore unacceptable to suggest that unless the person waives an accounting, he or she will have to pay greater fees or that there will be a lengthy delay in receiving a gift or inheritance.

6. Copies of all accountings are to be furnished to all interested parties by the attorney of record or by the personal representative of the estate.

7. Pursuant to Tenn. Code Ann. § 34-11-111, Guardians and Conservators of the estates of minors or disabled person are required to file annual accountings of assets handled by them, unless the accountings are expressly waived by court order, or the court allows biennial or less frequent accountings.

8. When a trust is a beneficiary, the trustee of the trust may waive an accounting, but the receipt and waiver must set forth the assets received from the personal representative. Additionally, whenever the trustee and personal representative is the same person, this fact shall be brought to the attention of the Court, and the Court shall determine whether, under the totality of the circumstances, waiver is appropriate. Normally, the Court in such situations will

require that the adult beneficiaries of the trust also agree to the waiver of accounting.

9. Final accountings of solvent estates may be waived, and the estate may be closed on receipt and waiver in the manner described in Rule XVI.

10. In submitting accountings, the following shall apply:

- a. Entries on accountings should be specific, giving date, source, and amount. For example, do not just list "Deposit", but rather show as "12/21/01" – Union Planters Bank Checking Account #854321-- \$721.71". Another example might be: "7/15/02" – Proceeds from Sale of 1997 Honda Accord -- \$2,500.00."
- b. All assets of the estate should be reflected on the accounting. However, tangible property, such as vehicles, boats, farm equipment, etc., shall be listed separately from the monetary portion of the accounting. Tangible property need not show a dollar value although approximations are permissible. Household furniture need not be itemized unless requested by an interested party.
- c. All personal representative should sign the accounting. However, in case of a disagreement or if one is unable to obtain a co-personal representative's signature for any reason, the other(s) should file separately. If all personal representatives do not sign the accounting, this fact shall be brought to the clerk's attention and referenced by a clerk's note on the accounting. An explanation of the facts surrounding a missing signature must accompany the accounting.
- d. If an accounting on a decedent's estate is filed more than two (2) years after the decedent's death, a notation on the accounting shall state why it is necessary to keep the estate open. For example: "Note: A lawsuit is pending in Chancery Court, Docket No. 85762, in which the personal representative is a plaintiff. The estate can be closed soon after disposition of that case, which we anticipate will be in May, 2003."
- e. It is preferred that items not be cumulative as previously allowed. However, no exception will be taken for identical monthly entries such as : "twelve (12) monthly encroachments of \$150.00 -- \$1,800.00.

RULE XII

OPENING OF ACCOUNTS

All fiduciary accounts must be opened at institutions with offices located within the State of Tennessee unless otherwise provided by Court order.

RULE XIII

FEES FOR PERSONAL REPRESENTATIVES AND ATTORNEYS IN DECEDENTS' ESTATES

1. The Court will set the fees of personal representatives and attorneys for a decedent's estate upon sworn petition filed by the personal representative. The petition may be filed by the attorney requesting the fee if the personal representative fails or refuses to file the petition.

2. If the interested parties are all sui juris and agree to the fees, the Court will not require a petition for fees to be filed in the cause. Any such fee agreement should be reduced to writing and should otherwise comply with the attorney's ethical responsibilities under DR 2-106 of the Code of Professional Responsibility as set forth in Tennessee Supreme Court Rule 8.

3. The personal representative may be allowed all necessary expenses in the care, management, and preservation of the estate and may be allowed compensation, as hereinafter provided, for services rendered. The fee of the personal representative shall be an amount the Court determines to be fair, reasonable and appropriate under all circumstances, including but not limited to the size of the estate being administered, the relationship of the personal representative to the decedent, the comparative involvement of the attorney for the estate and the personal representative, the complexity of the matter, the cooperation or lack thereof by the beneficiaries or heirs. The Court may, but shall not be required to, consider standard published rates charged by banks or other trust institutions for similar services.

4. In determining the amount of the attorney's compensation, the

Court will consider the amount and character of the services rendered, the complexity of the estate, the time and effort involved, the character and importance of the litigation, the amount of money or value of property involved, the professional skill and experience required, and the expertise and standing of the attorney.

5. In setting fees for either the personal representatives or attorneys, the Court may consider any extraordinary services, including but not limited to sales or mortgages of real or personal property, lengthy or contested litigation involving claims against the estate, complex tax returns or audits by any federal or state agencies, the managing or selling of the decedent's business, will contests, or such other litigation or special services that may be necessary.

6. When fixing fees of attorneys, the Court shall consider the guidelines hereinafter set forth. If the value of the decedent's gross estate (including real estate to the extent that services were rendered in connection with the real estate) plus any income earned during the administration of the estate is under \$30,000.00, a fee of \$1,500.00 shall be considered reasonable. For estates totaling over \$30,000.00, the fee may be graduated as determined by the following guidelines:

VALUE OF ESTATE		FEE
First	\$100,000.00	3% to 5%
Next	\$900,000.00	2% to 4%
Over	\$1,000,000.00	1% to 3%

7. These guidelines reflect what may be considered to be reasonable but are not binding on the Court, the parties, or the attorneys. Fees should be reasonable and otherwise in accordance with the Code of Professional Responsibility as set forth in Tennessee Supreme Court Rule 8.

8. If there are two or more personal representatives, the Court shall apportion such compensation pursuant to any agreement between them. If there is no such agreement, the Court shall apportion such compensation according to the services actually rendered by each.

9. When the attorney also serves as personal representative, only one fee shall be allowed, but the Court in fixing same shall take into consideration all of the services rendered.

10. The Court may, in its discretion, set an attorney's fee using an hourly rate rather than setting the fee as a percentage of the decedent's estate.

11. A copy of any petition that request compensation pursuant to this Rule shall be given to all interested parties. Additionally, the interested parties shall be given not less than ten days written notice of the date and time the petition is scheduled to be heard. This notice shall also be given to creditors of the estate if the estate is insolvent.

12. The petition requesting such fees shall include the following:

- a. A description of the assets of the estate.
- b. The value of the gross estate.
- c. The value of the probate estate.
- d. The amount of income earned by the estate.
- e. The amount of compensation requested.
- f. A statement that all interested parties have been properly notified of the proceedings and have been furnished with a copy of the petition.

13. If the amount of the compensation requested by the attorney or personal representative exceeds \$15,000.00 or if the compensation requested is in excess of the percentage guidelines set forth in paragraph six of this Rule, the matter will be heard on a special setting.

14. The attorney or personal representative shall provide the Court with copies of the Federal Estate Tax return and the Tennessee Inheritance Tax return prior to the hearing on specially set fee applications.

15. Except for good cause shown, fees for personal representatives of estates and their attorneys will not be heard until the estate is substantially completed and an early closing of the estate is contemplated.

RULE XIV

ELECTIVE SHARE

1. Petitions for elective share shall be specially set for hearing and not less than ten days written notice shall be given to all interested parties, stating that the spouse or the spouse's counsel will appear at a certain time in open Court to signify that the spouse elects to take an elective share of the decedent's estate and, if desired, to have same set aside.

2. The personal representative or the attorney for the personal representative shall be present at the hearing, unless the personal representative and all interested parties consent, in writing, for the elective share election to be entered of record.

RULE XV

YEAR'S SUPPORT

1. Petitions for year's support shall be specially set for hearing and not less than ten days written notice shall be given to all interested parties stating the day and time that a petition to set aside a year's support will be presented. Creditors are to be considered interested parties entitled to notice of the application and hearing if the estate is or could reasonably be expected to be insolvent.

2. In the Court's discretion, a petition for year's support allowance may be filed and heard even if no estate has been opened, provided that all interested parties are given notice of the proceeding and that it can reasonably be expected that the entire personal estate should be set aside as a year's support.

RULE XVI

CLOSING OF DECEDENTS' ESTATES

In order to close an estate, whether or not a final accounting is waived, the personal representative, after the period for creditors to file claims against the estate has expired, shall file a petition or sworn statement with the Clerk of the Court stating substantially the following facts together with a qualification or explanation if

any statement is not accurate:

- a. That the personal representative has properly administered the estate.
- b. That the personal representative has paid or settled all claims that were lawfully presented and that written satisfaction of all claims is attached or filed in the cause (or if the estate has been declared insolvent that the estate has been distributed in accordance with the Plan of Distribution).
- c. That the personal representative has paid or has set aside funds to pay all expenses of administration, including bond premiums and Court costs.
- d. That, consistent with all of the requirements of Tenn. Code Ann. § 30-2-306, the personal representative has mailed or delivered a copy of the published notice of the requirement to file claims to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative.
- e. That the personal representative has filed in the cause the final receipt and release from the Tennessee Department of Revenue evidencing payment of all Tennessee inheritance and/or estate tax due from the estate, or, in the alternative, a non-taxable certificate. (Note: In lieu of this statement, the petition may contain a statement that the court has waived, or is requested to waive, filing of the inheritance tax return under Tenn. Code Ann. § 67-8-409.)
- f. That the personal representative has distributed the estate according to the will and has obtained and filed receipts for specific bequests or if the decedent did not leave a will, has distributed the estate according to the laws of intestate succession.
- g. That the personal representative has complied with Tenn. Code Ann. § 30-2-301, requiring a copy of the will or appropriate portion thereof to be furnished to legatees or devisees under the will or, in case of an intestate estate, that a copy of the Letters of Administration has been sent to the distributees.
- h. Whether any residuary beneficiary is under a disability.
- i. That a receipt and waiver from each residuary beneficiary is

attached in which the residuary beneficiary acknowledges that the estate has been properly distributed to him or her and that the residuary beneficiary files the statement in lieu of a more detailed accounting.

RULE XVII

CLOSING GUARDIANSHIPS OF MINORS

Before final distribution of guardianship funds to a ward who has reached age 18, the Judges may require a personal conference with the ward, the guardian and counsel. If the ward has not graduated from high school, the Judges will look with favor on an application to extend the guardianship.

RULE XVIII

INVESTING FUNDS PER COURT ORDER

1. The Probate Court Clerk will invest litigant's funds paid into the Court only if there is a Court order directing it to do so. Unless the order provides otherwise, the Clerk shall determine in which institution the funds are to be invested and the nature of the investment. The order should state the type of investment desired. At the time of payment or when the order is entered, if later, it will be the duty of the attorney seeking investment of the funds to specifically call to the attention of the Clerk that the funds are to be invested. The Clerk, upon distribution of the funds held by it, shall be paid a commission equal to 10% of the income realized from the account. If funds are to be held for less than thirty days, the Clerk will deposit them in its "funds not invested account."

2. All orders directing the Probate Court Clerk to invest funds must include the applicable social security number or employment identification number of the person or entity responsible for the payment of taxes on the income produced by the investment.

RULE XIX

PARTICIPANTS WITH DISABILITIES

Whenever a participant in the trial process may have a disability requiring special accommodation, the Clerk of the Court should be notified in order to allow the Court to comply with the letter and spirit of the Americans with Disabilities Act.

ADOPTED this 1st day of September 2001.

ROBERT BENHAM,
JUDGE OF DIVISION ONE

DONN SOUTHERN,
JUDGE OF DIVISION TWO

CHRIS THOMAS,
CLERK OF THE PROBATE COURT